

**SHELLFISH CONSERVATION ORDINANCE
TOWN OF FREEPORT
CHAPTER 32**

1. **AUTHORITY:** This Ordinance is enacted in accordance with 12 M.R.S.A., Section 6671.
2. **PURPOSE:** To establish a Shellfish Conservation Program for the Town of Freeport which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:
 - A. Licensing;
 - B. Limiting the number of shellfish harvesters;
 - C. Restricting the time and area where digging is permitted;
 - D. Limiting the minimum size of clams taken;
 - E. Limiting the amount of clams taken daily by a harvester.
 - F. Enhancing the clam resources by the various recognized means;
e.g. reseedling, etc.
3. **EFFECTIVE DATE, DURATION, AND AMENDMENT:**
 - A. Effective Date: This Ordinance which has been approved by the Commissioner of Marine Resources shall become effective after its adoption by the Municipality. A certified copy of the Ordinance is filed with the Commissioner within twenty (20) days of its adoption.
 - B. Amendment: This Ordinance may be amended from time to time by the Town Council. Prior to adopting an amendment, the written approval of the amendment by the Commissioner of Marine Resources shall be filed with the Town Clerk. A certified copy of any amendment adopted by the Town Council shall be filed with the Commissioner of Marine Resources with twenty (20) days of its adoption.
4. **SHELLFISH CONSERVATION COMMISSION:** The Shellfish Conservation Program for the Town of Freeport will be administered by the Shellfish Conservation Commission consisting of seven (7) members to be appointed by the Freeport Town Council for terms of three (3) years. The Commission's responsibilities include:
 - A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued;

- B. Surveying the clam flats to maintain current information on shellfish resources;
- C. Submitting to the Freeport Town Council proposals for the expenditures of funds for the purpose of shellfish conservation;
- D. Keeping this Ordinance under review and making recommendations for its amendments;
- E. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources;
- F. Recommending conservation closures and openings with the Area Biologists of the Department of Marine Resources and recommending other long-term management goals;
- G. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other Commission activities;
- H. Identifying conservation projects which qualify an applicant for Renewal of a Commercial License. The Shellfish Program Coordinator shall record the names and hours worked by individuals on a conservation project and submit them to the Shellfish Conservation Commission.

5. DEFINITIONS:

- A. Resident: For the purpose of this Ordinance, the term "Resident" shall mean a person who owns or rents real estate within the Town of Freeport which is his or her permanent, fixed place of abode and principal place of residence. If a person claiming to be a resident neither owns nor rents real estate, they shall be required to produce such other evidence of municipal residency as may be required by the Town Clerk. A person shall not qualify as a resident of this Municipality unless he or she has maintained a permanent, fixed place of abode and principal place of residence within the Town of Freeport for twelve (12) months prior to the date his/her claim of municipal residence is made. A person shall cease to be a resident of this Municipality on the date he/she acquires a permanent fixed place of abode and principal place of residence in any other Municipality or moves from the Town of Freeport.
- B. Nonresident: The word "Nonresident" means anyone not qualified as a resident under this Ordinance.
- C. Shellfish, Clams: When used in the context of this Ordinance, the words "shellfish" and "clams" means soft-shell clams, *Mya Arenaria*.

D. Municipality: Refers to the Town of Freeport, Maine.

E. All flats bordering the Wolf's Neck State Park as of December 8, 1983 are now under the jurisdiction of the Freeport Shellfish Conservation Ordinance. Recreational digging in Wolf's Neck State Park will not require a recreational license.

6. LICENSING:

Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this Municipality without having a current license issued by this Municipality as provided by this Ordinance.

A Commercial Digger must also have a valid State of Maine Commercial Shellfish License issued by the Department of Marine Resources in order to harvest shellfish commercially.

Shellfish licenses are not required in order to dig and take no more than one peck in the State Park areas where and when it is lawful to do so.

A. Designation, Scope, and Qualification:

- (1) Resident Commercial Shellfish License: The license is available to residents of the Town of Freeport and entitles the holder to engage in the activities of commercial harvesting of shellfish in accordance with the ordinance and conservation measures of this Municipality.
- (2) Nonresident Commercial Shellfish License: The license is available to nonresidents of this Municipality and entitles the holder to engage in the activities of commercial harvesting of shellfish in accordance with the ordinance and conservation measures of this Municipality.
- (3) Resident Recreational Shellfish License: The license is available to residents and real estate taxpayers of Freeport. A resident-recreational shellfish license entitles the holder to dig and take no more than one peck of shellfish in any one day.
- (4) Nonresident Recreational Shellfish License: This license is available to nonresidents of this Municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day.
- (5) License Must Be Signed: The licensee must sign the license to make it valid.

B. Applications for Commercial Licenses:

- (1) Applications for renewal commercial licenses and new commercial licenses shall be submitted to the Town Clerk at the times specified in Section 6(E) and 6(I), respectively.
- (2) Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature, and whatever other information the Municipality may require.
- (3) Misrepresentation:
 - a) Application void. If at any time prior to the issuance of a license, the Town Clerk becomes aware of circumstances which suggest that the applicant has given false information on the license application, the Town Clerk shall request the Police Chief, or his designee, to investigate those circumstances and any other circumstances relevant to the license application and report to the Clerk. If the results of the investigation continue to suggest that the applicant has given material false information on the license application, the Clerk shall communicate the results of the investigation to the applicant and provide the applicant with an opportunity to respond in writing. If, after reviewing the applicant's response, the Clerk concludes that the applicant gave material false information on the license application, the Clerk shall void the application. A pending investigation under this subparagraph (a) shall not preclude an otherwise qualified applicant from participating in the drawing pursuant to Section 6(I), but no license shall be issued to such applicant until the Clerk has made a determination on the results of the investigation. In the event the Clerk determines to void the application, the Clerk shall award the license to the next qualified applicant on the list prepared pursuant to Section 6(I). An applicant whose application is voided shall not be entitled to any refund of license fees.
 - b) If, after the issuance of a license, the Town Clerk becomes aware of circumstances which suggest that the licensee gave false information on the license application, the Town Clerk shall request the Police Chief, or his designee, to investigate those circumstances and any other circumstances related to the license application. If the results of the investigation continue to suggest that the licensee gave false information on the license application, the Town Clerk shall give the licensee a minimum of seven (7) days notice of a hearing before the Board of Appeals to determine whether or not the licensee gave false information on the license application. The

Police Chief, or his designee, shall present the evidence suggesting that false information was given. The licensee shall have the right to present evidence to show that false information was not given. If, after hearing, the Board of Appeals determines that material false information was given, the Town Clerk shall revoke the license and give the licensee written Notice of Revocation. A licensee whose license is revoked shall not be entitled to any refund of license fees.

- (c) **Change of Address:** If a licensee's address changes at any time, the licensee must provide written documentation to the Town Clerk within 30 days after the change. If the Police Chief or his designee finds that there is sufficient evidence to prove that a licensee failed to notify the Town Clerk of a change of address as required under this subsection, the Police Chief, or his designee, shall present that information to the Town Clerk. If the Town Clerk determines that there was a change of address without the notification required by this subsection, the Clerk shall give notice of the suspension to the licensee and shall suspend the license for a period of 30 days from the date of such notice.

C. Application for Recreational Licenses:

- (1) Resident and Nonresident Recreational Licenses will be available beginning in June. Licenses are effective July 1 through June 30.
- (2) Contents of Application: The application will be in the form of an affidavit and must contain the applicant's name, current address, mailing address, birth date, height, weight, signature, and whatever other information the Municipality may require.
- (3) Misrepresentation:
 - a) Application void. If at any time prior to the issuance of a license, the Town Clerk becomes aware of circumstances which suggest that the applicant has given false information on the license application, the Town Clerk shall request the Police Chief, or his designee, to investigate those circumstances and any other circumstances relevant to the license application and report to the Town Clerk. If the results of the investigation continue to suggest that the applicant has given material false information on the license application, the Clerk shall communicate the results of the investigation to the applicant and provide the applicant with an opportunity to respond in writing. If, after reviewing the applicant's response, the Clerk concludes that the applicant gave material false information on the license application, the Clerk shall void the application. An

applicant whose application is voided shall not be entitled to any refund of license fees.

- b) If after the issuance of a license, the Town Clerk becomes aware of circumstances which suggest that the licensee gave false information on the license application, the Town Clerk shall request the Police Chief, or his designee, to investigate those circumstances and any other circumstances related to the license application. If the results of the investigation continue to suggest that the licensee gave false information on the license application, the Town Clerk shall give the licensee a minimum of seven (7) days notice of a hearing before the Board of Appeals to determine whether or not the licensee gave false information on the license application. The Police Chief, or his designee, shall present the evidence suggesting that false information was given. The licensee shall have the right to present evidence to show that false information was not given. If, after hearing, the Board of Appeals determines that material false information was given, the Town Clerk shall revoke the license and give the licensee written Notice of Revocation. A licensee whose license is revoked shall not be entitled to any refund of license fees.

- (4) Recreational License. Any person who holds a State of Maine Shellfish License is not eligible for a recreational license. A Recreational Shellfish Licensee may not engage in the wholesale or retail sale of any shellfish harvested under this license.

(5) Recreational license violations:

- a) The possession of more than one (1) peck of clams by anyone not possessing valid State and Town - issued Commercial Licenses constitutes a court summons; and if the violator is found to be in violation in a court of law, he/she will automatically forfeit said Recreational license for the remainder of the license year.
- b) If the holder of a recreational license is convicted of a wholesale or retail sale of shellfish harvested within the Town of Freeport under the recreational license, that recreational license shall be automatically suspended from the date of conviction through the remainder of the license year.

- D. Fees: Effective January 1, 1999: The fees for the licenses are as stated below and must accompany in full the application for the respective license. Fees received from shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.

- (1) Resident Commercial: Two Hundred Dollars (\$200.00)

- (2) Nonresident Commercial: Four Hundred Dollars (\$400.00)
- (3) Resident Recreational: Ten Dollars (\$10.00)
- (4) Nonresident Recreational: Twenty Dollars (\$20.00)
- (5) A recreational license is not required for a digger under 12 years of age to engage in recreational clam harvesting.
- (6) License Fees will be waived for individuals 65 years or older for recreational licenses only.
- (7) No fees (commercial or recreational) are refundable at any time.

E. Limitation of Diggers: Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:

- (1) Prior to May 15 the Freeport Shellfish Conservation Commission with the approval of the Commissioner of Marine Resources will establish the number of commercial and recreational licenses to be issued.
- (2) The Shellfish conservation Commission will notify the Town Clerk in writing prior to June 1 of the number of licenses to be issued. No reservation will be accepted by telephone.
- (3) The town clerk shall issue licenses to residents and non-residents as specified below: From July 1st through September 28th annually, 10 % of the total commercial licenses and 10 % of the total recreation licenses shall be reserved for non-residents. Beginning September 29 annually, any remaining licenses shall be issued on a first come, first serve basis, without regards to residency.

Renewal Commercial License: An application for a renewal commercial license must be made at the Town Clerk's office during a regular business day during the month of April and must be accompanied by payment of 50% of the required license fee. This 50 % payment must be received before the close of business on the last business day in April. The remainder of the fee must be paid no later than the close of business on the last business day in May. Failure to pay either the 50 % or the 100% of the license fee by the close of business on the last respective business days shall result in not being eligible for a renewal license. Renewal licenses will then be issued at the Town Clerk's office during regular business days in June. Such licenses shall be valid from July 1 through June 30.

As an alternative to making application at the Town Clerk's office, an application for a renewal commercial license may be submitted to the Town Clerk's Office by

mail. Applications by mail must be received at the Town Clerk's office on a day the Clerk's office is open for business no earlier than April 1 and no later than April 30. The application must be accompanied by the 50% of the required license fee. The Town Clerk shall mark all applications with the date and time of receipt.

To be eligible to purchase a renewal license, a person must have been licensed for the previous year; and must have completed eight (8) hours of conservation work as determined by the Shellfish Conservation Commission. Failure to meet the requirements set forth by the Freeport Shellfish Commission shall result in failure to qualify for a renewal license. In the event that the number of qualifying applications exceeds the number of available licenses, licenses shall be awarded pursuant to the procedure set forth in Section 6 (I) of this Ordinance.

Of the eight (8) hours of conservation work one must complete for license renewal, at least four (4) hours of the conservation time must be used to do clam flat survey. If a survey is not needed in a particular year, license holders must still complete eight (8) hours of conservation time as determined by the Shellfish Commission. No person may perform conservation work as a surrogate for the applicant. The Shellfish Commission may substitute other types of conservation work at the request of commercial harvesters age 60 and over. Any requests shall be made by the license holder in person by the last regularly scheduled Freeport Shellfish Commission meeting before the conservation activity is scheduled. Any commercial harvester who removes clams from the flats for personal use or sale while engaged in conservation work will not receive credit for that conservation work.

The Shellfish Conservation Commission shall waive all or part of the requirement for conservation time for an applicant who provides the Commission with a written statement from a physician indicating that the applicant was not able to participate in any regularly scheduled conservation time due to incapacitation by illness or injury. At the request of an applicant, made at a regular monthly meeting of the Commission, the Commission may arrange on an hour-for-hour basis:

- (a) Another time to complete conservation work for an applicant who demonstrates to the Commission that the illness or incapacitation of a parent, spouse or child prevented that person from participating in regularly scheduled conservation time; or
- (b) Alternate less strenuous work for an applicant who provides the Commission with a written statement from a physician indicating that the applicant is not physically able to participate in regular conservation work.

- F. License Expiration Date: Each license issued under authority of this Ordinance expires at midnight on the thirtieth (30th) day of June.
- G. Reciprocal Harvesting Privileges: Freeport does not currently participate in a reciprocal harvesting agreement with any other municipality.
- H. Suspension: If the Police Chief or Shellfish Warden presents to the Town Clerk evidence that any licensee has been convicted of two violations of this Ordinance within the license (July 1 to June 30) year, the Town Clerk shall give the licensee seven (7) days notice of the suspension of the license for thirty (30) days, stating the reason for the suspension. The licensee has the right to meet with the Town Clerk during that seven (7) day period to review the evidence of convictions in the Town Clerk's possession, and to present any evidence showing the licensee does not have the convictions. A third conviction of violations of this Ordinance in the same licensed year will result in forfeiture of the license for the remainder of the licensed year. This suspension/forfeiture rule applies to commercial licensees. A commercial harvester whose license has been suspended or forfeited may still be eligible for a renewal license in the subsequent year, provided he/she has fulfilled conservation -work requirements. See Section 11 for recreation license violations.
- I. New Commercial Licenses: New Commercial licenses, when available, will be advertised in the local newspaper(s) during the first week of June in the year in which the license(s) become available (hereinafter called the new-license year). Applications for these licenses must be received by the Town Clerk no later than June 15 of the new-license year and must comply with the provisions of Section 6.B of this Ordinance. Any licenses(s) available for the new-license year will be issued by June 30 in accordance with the following procedure:
- (1) The Town Clerk shall designate an assistant, who may be any appointed municipal official or municipal employee who is disinterested in the outcome of the procedure. "Disinterested" means not related by blood, marriage or adoption to any of the applicants and not having a direct or indirect pecuniary interest in the outcome of the procedure. No elected municipal official and no member of the Shellfish Conservation Commission shall serve as the Clerk's assistant in carrying out this procedure.
 - (2) The Clerk shall prepare a list of the names of the qualifying applicants; the list need not be in any particular order. Next to each name on the list, the Clerk shall enter a unique three digit number, selected at random, and shall write each such number on an index card. All the index cards shall be of uniform size, color and texture.

- (3) The Clerk's assistant shall then place all the numbered index cards in a box or other container capable of being closed and sufficiently large that the index cards can be mixed by shaking the container.
- (4) The Clerk's assistant shall shake the container in order to mix the contents, and shall then place or hold the container at a location above the Clerk's eye level so that the Clerk can reach into the container and withdraw cards without seeing the numbers on the cards.
- (5) The Clerk shall withdraw the cards one-by-one, reading each number drawn aloud. The Clerk's assistant shall make a list of each of the numbers so drawn in the order in which they are drawn. Then, using the list prepared under subparagraph 2 above, the Clerk shall place the corresponding applicant's name next to each number.
- (6) The Clerk shall then issue the available licenses to the qualifying applicants, first to residents and then to non-residents, in the order in which their names appear on the list prepared under subparagraph (5).
- (7) The procedure set forth in this Section 6 (I) shall be a public proceeding, open to the public pursuant to 1 M.R.S.A. Section 403, but no applicant or any member of the public has any right to participate in the procedure. Applicants are not required to be present at the time the licenses are issued. The procedure shall be conducted at the Freeport Town Office on the dates designated in Section 6 (E) (3) for each category of license, at a time to be set by the Clerk. The Clerk shall announce the exact time for the procedure by posting a notice in the Freeport Town Office at least seven (7) days prior to the date of the procedure. Any failure to provide such notice shall not invalidate the results of the procedure.

J. No Night Harvesting: It is unlawful for any person to dig or take shellfish from the shores or flats of Freeport at night. For the purposes of this paragraph, the term "night" means that period of time beginning one hour after sunset and ending one hour before sunrise.

K. Aiding and Abetting: A harvester holding a commercial license who aids and abets the harvest of shellfish in violation of this Ordinance shall be subject to the same penalties as the person he has assisted.

7. **OPENING AND CLOSING OF FLATS**: The Shellfish Conservation Commission, with the approval of the Commissioner of Marine Resources, may

open and close areas for shellfish harvest. Upon recommendation of the Department of Marine Resources Area biologist that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Shellfish Conservation Commission may call a public hearing on ten-day's notice published in a newspaper having general circulation in the Town, stating the time, place and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Shellfish Conservation Commission made after hearing shall be based on findings of fact.

Winslow Park Closure: In order to preserve a beach area for the public use during the summer months, a portion of the flats within and adjacent to Winslow Park shall be closed to shellfish harvesting between May 1 and November 30 annually. The portion so closed is the area on the left side of the public boat ramp (as viewed from the land) lying between the shore and a line extending easterly from the seaward tip of the boat ramp to a red painted post at a point on the shore established by the Shellfish Warden. In consideration of that seasonal closure and notwithstanding anything to the contrary in Chapter 34 of the Freeport Code (Winslow Park Administrative Policies), commercial license holders using Winslow Park shall not be charged any parking or ramp fees.

8. **FINES:** Any person harvesting shellfish in an area closed for conservation shall be subject to the following: violating any provision of this Ordinance shall be subject to, but not limited by, the penalties established by State Law, Title 12 M.R.S.A., Section 6671.
9. **MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS:** It is unlawful to possess soft shell clams that are less than two (2) inches in length. The tolerance is listed below:
 - A. Tolerance: Any person may possess soft shell clams that are less than two (2) inches if, beginning on the effective date of this article, they comprise less than 10% of any bulk pile; and beginning in calendar year 1986, they comprise less than 10% of any bulk pile. The tolerance shall be determined by numerical count of not less than one (1) peck nor more than four (4) pecks taken at random from various parts of the bulk pile or by count of the entire pile if it contains less than one (1) peck.
 - B. Method of Determining Tolerance: The tolerance is determined by a one (1) peck measure of a "LOT". The word "LOT" as used in this Ordinance means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel or other container, the contents of each box, barrel or container constitute a separate "LOT".

- 10. EFFECTIVE DATE:** This Ordinance which has been approved by the Commissioner of Marine Resources shall become effective after its adoption by the Municipality provided a certified copy of the Ordinance is filed with the Commissioner within twenty (20) days of its adoption.